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September 2_, 1995

Mr. Howard M. Shapiro
General Counsel
The Federal Bureau of Investigation
Washington, D.C. 20535

Dear Mr. Shapiro:

On September 21, 1995, the Assassination Records Review Board made formal determinations regarding four Federal Bureau of Investigation assassination records (attached as Exhibits 1-4). These are the same four records that the Review Board had voted to open in full on July 17-18, 1995, but which were appealed to the President by the Bureau.

At the time the Review Board first made its formal determinations regarding these four records in July, the Bureau had declined to submit any specific evidence relating to the documents or to the informants whose symbol numbers were referenced therein. After the Bureau appealed the Review Board's decisions to the President, the Review Board agreed to provide the Bureau with some additional time to submit specific evidence in support of the Bureau's proposed postponements. In response to this extension of time, we received your letter, dated September 19, 1995, wherein you reiterated your arguments favoring postponement of the records and attached (redacted) copies of personal interviews with informants and their acquaintances. In addition to making arguments related to the specific documents in question, you requested that the Review Board take a "categorical" approach to all remaining records involving informants and that the Review Board issue regulations that would ~~obviate~~eliminate the Bureau's need to provide specific evidence in the future regarding informants.

Because of the precedential importance of the records at issue, and the significance of your request to issue categorical regulations, I will provide an explanation of the Board's formal determinations with respect to the four records at issue and will respond to your general request as well.

The Four Records at Issue

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Exhibit 1: 124-10070-10354.

The Bureau now acknowledges that the Review Board staff was correct in stating that the informant is now deceased. Additionally, the Bureau was unable to locate any descendants or relatives of the informant. The Review Board noted that the Bureau has "no further objection to disclosure" of the document. Due to the lack of the clear and convincing evidence needed to support a postponement, and given the Bureau's waiver of any further objection, the Review Board voted unanimously to open the record in full. (It should perhaps be noted here that if the Review Board were to adopt the "categorical approach" proposed by the Bureau, this record, which the Bureau now acknowledges may be opened, would have continued to be postponed.)

Exhibit 2: 124-10070-10354

Exhibit 2 ~~is a very interesting documents that~~ provides material evidence on the question whether Dallas police officials may have been complicitous in the death of Lee Harvey Oswald. Dated only two days after Oswald was murdered in the Dallas Police Department building, the document is an "urgent" cable to Director J. Edgar Hoover from the Special Agent-in-Charge of the Houston office. The portions of the document that already have been made public reveal that the FBI informant (whose symbol number is redacted), reported that a longstanding female acquaintance of the informant (whose name -- or alias -- is redacted) was reputedly a "fixer" between the Dallas police and the "criminal element." The document reports that the informant called the fixer and asked her questions about the murder of Oswald while he was in Dallas police custody. The informant wanted to know whether it was an "accident" that Ruby had shot Oswald, or whether there was anything more to the story. The document suggests that the fixer believed that there was more to the story than had been revealed, but was reluctant to talk at that time.

In the wake of the murder of Lee Harvey Oswald, there have been substantial questions raised regarding ~~the question~~ whether his murderer, Jack Ruby, acted alone or on the behest of organized crime. There have also been questions raised by the possible assistance that Ruby may have received from his contacts on in the Dallas police force. Although the Warren Commission discounted ~~any larger story~~ the existence of such a conspiracy, there is some important evidence that the story may be more involved than the Warren Commission knew or understood. Although the Review Board takes no position on the merits of any of these issues, it does believe that the document in question clearly is relevant and material to these important issues. There is, in short, very high public interest in this record.

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There are three subjects redacted in the document: the symbol number of the informant, the name (or alias) of the fixer, and the occupation of the fixer. The only evidence provided in support of their postponement by the Bureau consists of an FD-302 report by a Dallas, Texas, FBI agent who conducted an interview with the former informant. In the words of the FBI agent, the informant "does not want his name, telephone number or other identifying information disclosed as to do so would be detrimental to himself, his family and his business."

The Board was perplexed by Since the statement that the informant did not want his name or telephone number to be disclosed — because that information is not contained in the document and is not at issue does not reveal the identity of the informant, but rather the informant symbol number, the Bureau has a two-pronged responsibility. The fact that the informant objected to It must provide clear and convincing evidence, first, that the release of the redacted information that is not even at issue — raises would lead to the substantial question of what the agent told the informant during disclosure of the informant's identity, and second, that the interview and to what the informant, perhaps erroneously, was objecting disclosure of the identity would lead to harm. The FD-302 certainly suggests that the informant was led Board believes that the Bureau failed to believe — incorrectly — that his name would be disclosed meets its burden in the document both cases. The informant's symbol number — in Bureau provided no evidence that the release of the context of this document — does not identify in any way who redacted information would lead to the disclosure of the identity of the informant is, and rather than provide evidence of harm in the event that the identity were disclosed, the Bureau simply related the assertions of harm voiced by the informants themselves.

Based upon the evidence presented to it, the Review Board voted, unanimously, to release the name and occupation of the fixer (regarding whom no evidence was offered) and to release the prefix and suffix of the informant's symbol number. —The Bureau provided no evidence that the informant's symbol number would reveal the name or identity of the informant.

Moreover, the Board was not persuaded by the informant's self-serving and uncorroborated protestations that some harm might befall him if his identity were revealed. — Not only is there no evidence that his identity would in fact be revealed, but the Bureau was unable to provide any corroborating evidence in support of the informant's claims. — For example, the Bureau provided no evidence from the informant's source file to show that he provided any evidence that may subject him to harm or even that he ever signed a confidentiality agreement with the Bureau.

The Bureau similarly provided no evidence that the release of the name of the fixer, or her

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~~occupation, would cause any harm to the informant or to any other person.[†]~~

~~Based upon the evidence presented to it, the Review Board voted, unanimously, to release the name and occupation of the fixer (regarding whom no evidence was offered) and to release the prefix and suffix of the informant's symbol number.~~ The only information to be postponed is the numerical portion of the informant's symbol number. The Board decided to redact this portion of the symbol number because it would provide very little (if any) useful information to the public and it precludes any possible basis for the Bureau's stated objections.

Exhibits 3 and 4: 124-10184-10256 and 124-10244-10077

Exhibits 3 and 4 discuss, in part, a small Communist Party meeting at the home of Ms. Genne Kuhn in Wheeling, West Virginia. In December, 1963, Ms. Kuhn had invited five persons to her home to hear a talk by her guest, Arnold Johnson, who was then the Public Relations Director of the Communist Party USA. The documents disclose that *three of the five invitees who gathered to hear Mr. Johnson were FBI informants*. Your September 19 letter to the Review Board further discloses that two of the informants were married to each other and that both are now living and that the third informant is deceased. One of the documents also discloses that, at one point, a smaller meeting included only Mr. Johnson, Ms. Kuhn, and two of the three FBI informants.

Although the Bureau provided statements from two living informants (the husband and wife team) and a statement by relatives of the third requesting continued non-disclosure, *the Bureau made no effort to show why releasing the symbol numbers in these two documents would make it any more likely that the informants' identities would be revealed*.

[file number argument]

Exhibit [3] also discloses other information about some additional Communist Party activities. The Bureau did not make any argument showing how the release of this information would tend to disclose the identity of the informants.

Accordingly, the Review Board voted, unanimously, to release all of the information in the two documents except the numerical portion of the informants' symbol numbers.

The Review Board's Response to the Bureau's Request for a Categorical Approach

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The Bureau reported it "had expended over 300 manhours" in gathering information on the four informants. In order to avoid expending such resources in the future, the Bureau suggested that the Review Board "adopt a categorical approach when determining whether to postpone disclosure of all similar records." The Review Board understands this "categorical approach" to constitute a significant change from its previously stated willingness to "be prepared with particularity to defend a particular piece of information and the necessity of its not being divulged."¹

The Review Board respectfully declines to adopt the suggestion that a categorical approach be adopted. We make the following observations in response to the Bureau's concerns regarding its expenditure of resources:

First, the Bureau seems to have devoted part of its effort to proving that the informants in question had "an understanding of confidentiality" within the meaning of Section 6.4 of the JFK Act. The Review Board did not question the original existence of such an understanding. Indeed, the Review Board stated in its August 11, 1995 Reply to the President that for the postponements at issue, "the Review Board accepts that the use of informant symbol numbers or the existence of an informant file provides evidence that the informant in question was assured some measure of confidentiality."²

~~*Second*, the Review Board did not find the FD-302 interviews to be of assistance and would, therefore, recommend~~ interviews with former informants ~~that the Bureau not expend resources in obtaining such interviews~~ simply indicate their discomfort with the disclosure of their identities provide little probative information.—The FD-302's appeared to be somewhat predictable in that the informants, family members, and former FBI handlers all repeated essentially the same message: the identities should not be disclosed and that the informants would feel at risk if their identities were to be disclosed. The statements were so similar that the Review Board did not discern any particular value in the Bureau's obtaining additional and predictable statements in the future.

Third, the Bureau seems to have focused some of its resources to tracking down distant descendants of deceased informants. The Review Board would advise that such efforts will provide little probative information and would recommend that the Bureau not undertake such efforts.

Fourth, the Bureau seems, unwisely, to have declined to provide the Review Board with

¹Sessions cite from p. 1 of Brief.

²Brief at 6 n.8.

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evidence from the Bureau's least expensive and most probative source: the informant's source file. Rather than track down an informant to determine whether he had an understanding of confidentiality, the Bureau could have simply shown the Review Board (or staff) a copy of the agreement. Indeed, the Review Board was struck by some informants' insistence that they had signed non-disclosure agreements although the Bureau did not provide copies of the agreements themselves. Similarly, the source file would seem to provide the best evidence of whether the informant at issue had provided information on dangerous persons who might subsequently be inclined to cause harm. But this the Bureau did not do.

The Review Board is very interested receiving evidence on whether the informant is still living, whether there is any corroborating evidence of any harm that could befall the informant if his or her identity were disclosed, and, very importantly, *whether the disclosure of the redacted information in the documents under review would in fact disclose the identity of the informant.*

I trust that this response will provide you with some helpful guidance regarding the Review Board's understanding of these matters.

Very truly yours,

John R. Tunheim
Chairman

cc: The Honorable Jamie Gorelick
Deputy Attorney General

Marvin Krislov, Esq.
Associate Counsel to the President

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